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C O N F I D E N T I A L SECTION 01 OF 02 KYIV 000954

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SUBJECT: UKRAINE: YUSHCHENKO GETS HIS CABMIN LAW

REF: A. 2006 KYIV 04435

¶B. KYIV 00102

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Classified By: Political Counselor Kent Logsdon for reasons 1.4(b,d).

¶11. (C) Summary. President Yushchenko won a tactical victory on May 16, when Prime Minister Tymoshenko's faction in the parliament backed down after a week's stand-off and agreed to vote for the new law on the Cabinet of Ministers, which the President has been pushing for since December. Yushchenko included it as a priority law in the coalition agreement and introduced it to the Rada in January, but Tymoshenko's BYuT has resisted because certain articles strengthened the President and/or weakened the PM. However, after Yushchenko refused to compromise to end BYuT's blockade in the Rada last week, the PM's faction backed down and supported the law, which Yushchenko immediately signed. The law seeks to correct some of the confusion from the 2004 constitution and the controversial 2007 CabMin law -- passed by a tactical Regions-BYuT supermajority in January 2007 -- such as clarifying who is responsible for certain appointments and dismissals. The law also gives the President back some of the powers he had lost under the 2007 law, particularly enhancing the power of the presidentially-run National Security and Defense Council, which could cause further problems for the Cabinet as it tries to move its agenda forward while dealing with an aggressive presidential team.

¶12. (C) Comment. Interestingly, the final version of the new CabMin law differs somewhat from the draft introduced by the Presidential Secretariat in January, scaling back some of the more aggressive clauses from the initial draft law, suggesting that the presidential team made some compromises to get the law passed. Although this is a positive step for the coalition, which has been battered in past weeks by a continuing public spat between President and Prime Minister, passage of the law looks unlikely to end the conflict. Immediately after signing the law, President Yushchenko publicly criticized Tymoshenko for taking so long to pass the law, arguing that the delay had been in violation of the coalition agreement and noting that only four of the 12 laws agreed to in the coalition agreement had been passed by the Rada. End summary and comment.

CabMin Law: A Substitute for Constitutional Reform

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¶13. (C) The 2004 constitutional reforms that came into effect in 2006 failed to clearly define the powers and prerogatives of President and PM, leading to continual clashes between Yushchenko and then PM Yanukovych in the fall of 2006. During this battle, Regions tried to legislate its power grab by introducing its law on the Cabinet of Ministers in October 2006 -- a bill that greatly shifted power in favor of the Cabinet and PM (ref A). After Yanukovych's Party of Regions initiated the dismissal by the Rada of the

president-nominated Foreign Minister in December 2006 and Yushchenko refused to acknowledge the vote or the dismissal, Regions passed the CabMin law in December. Yushchenko immediately vetoed it, but Tymoshenko's BYUT allied itself with Regions in January 2007 to override the veto as a slap to the President who had been ignoring his former Orange Revolution colleagues. Although BYUT's tactical move brought Tymoshenko back into the game and eventually contributed towards the President's April 2 dismissal of the Rada, the CabMin law went into effect, tying the President's hands in many ways over the past year. Yushchenko's team included a new CabMin law as one of 12 priority legislative items in the coalition agreement signed in November 2007.

#### Clarifying Appointments and Procedures

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¶4. (SBU) The new CabMin law removes some of the contradictions inherent in the 2004 constitutional amendments and walks back some of the more controversial clauses of the Regions-drafted 2007 iteration of the CabMin law. For example, it clearly states that only the President can initiate the dismissal of the two ministers that he nominates -- the Ministers of Foreign Affairs and Defense. In addition, the 2007 law tried to force Yushchenko's hand by stating that if he did not name a new FM or DM within 15 days, the Rada coalition could do it in his place -- the new law removes this clause. The new law also eliminates the 2007 provision that allowed the coalition to put forward a PM nomination without the President's consent, as well as outlines specific circumstances under which the President can reject the coalition's nomination for PM.

¶5. (SBU) The law requires that Rada MPs nominated to the Cabinet submit letters of resignation from their

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parliamentary mandate to be voted on simultaneously with their confirmation, eliminating the current situation where ministers are double-encumbered if the Rada does not vote in a timely fashion to terminate their Rada mandates. The law also says that the Cabinet can be voted on as a package or minister by minister, an issue that was debated repeatedly in December 2007. The new law specifies that the government program be based on the coalition agreement and that it be voted on immediately after the vote confirming the Cabinet. If the program is not supported by 226 MPs, it must be amended and voted on again within 15 days. (Note. The constitution states that if the Rada does not approve the government program, the Cabinet can be subject to a vote of no confidence. End note.)

#### Shifting Powers

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¶6. (SBU) The new CabMin law transfers some PM powers to individual ministers and decreases the Cabinet's control over local government. It gives the ministers power to name their own deputies -- in the 2007 law the PM nominated all deputy ministers, giving the PM a greater say in the structure of the ministries. In addition, the ministers now have greater direct control over executive bodies that fall within their sphere, rather than these bodies simply belonging to the Cabinet. The new law gives the CabMin the right to review the issue of appointments and dismissals of oblast and raion heads and send recommendations to the President, but removes its power to discipline a governor independently. The new law also allows the Cabinet to recommend the President cancel certain local government acts, but it eliminates the Cabinet's ability to cancel the decisions itself, a power it received in the 2007 law.

#### Bolstering the President, A Little

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¶7. (C) Yushchenko used the new law to beef up some of his own

powers, although the language is toned from the original draft submitted to the Rada (ref B). The law empowers the NSDC and other presidential bodies by stating that the CabMin "must ensure" implementation of presidential edicts and NSDC decisions. (Note. The first test of this last power is ongoing, as the NSDC voted Friday to ban the Cabinet and State Property Fund from privatizing the Odesa Portside Plant. The CabMin held an emergency meeting May 12 and agreed to postpone the tender, although they did not cancel it outright. End note.) The new law also requires the CabMin to respond to informational requests from all presidential bodies. In contrast, the 2007 law prohibited the NSDC from giving instructions to the Cabinet or to ministers. However, the President's power to cancel CabMin resolutions, which was in the draft law, was removed. Instead, he can suspend CabMin resolutions pending Constitutional Court rulings, a power already granted by the constitution.

¶8. (SBU) The law also seeks to tone down a requirement from the 2007 law that the PM and relevant ministers countersign certain presidential acts -- this article gave the Yanukovych government great leeway to veto presidential decrees. While the law still says the PM and relevant minister should countersign presidential acts tied to certain aspects of constitutional article 106 -- such as the appointment of ambassadors -- it removes language that had detailed a procedure allowing ministers to object to the presidential acts and refuse to sign. The law also says that the President has the right to initiate the dismissal of the Cabinet with Rada approval, but this is merely an elaboration of the constitution's article 87, which already empowers the President to request the Rada consider a no confidence vote in the government.

¶9. (U) Visit Embassy Kyiv's classified website:  
[www.state.sgov.gov/p/eur/kiev](http://www.state.sgov.gov/p/eur/kiev).  
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